IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No. 488 of 2000
In
SPECIAL CIVIL APPLICATION No. 994 of 1990

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT
HONOURABLE MS.JUSTICE H.N.DEVANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STOVEC INDUSTRIES LTD - Appellant(s)
Versus
MAHAGUJARAT LABOUR UNION & 2 - Respondent(s)

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Appearance :
KEYUR GANDHI for NANAVATI ASSOCIATES for Appellant(s) : 1,
MR JAGDISH M SHAH for Respondent(s) : 1,
MR UDAY BHATT, AGP for Respondent(s) : 2 – 3.

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

and

HONOURABLE MS.JUSTICE H.N.DEVANI

Date : 18/08/2006

ORAL JUDGMENT

(Per : HONOURABLE MS. JUSTICE R.M.DOSHIT)

Though this Appeal is listed for final hearing for a long time, learned advocate Mr.Shah has not appeared or attended the Appeal.

Heard learned advocates Mr.Gandhi and Mr.Bhatt.

This Appeal under clause 15 of the Letters Patent has been preferred by the Stovec Industries Limited (hereinafter referred to as, **"the Company"**) against the judgment and order dated 15th October, 1999 passed by the learned Single Judge in above Special Civil Application No.994/1990.

The twenty-five workmen represented by the respondent Mahagujarat Labour Union (hereinafter referred to as, **"the Union"**) were the employees of one Stormac India Limited (hereinafter referred to as, **"the Stormac India"**). In or around the year 1984 the Stormac India was facing financial crisis. On 10th

March, 1984 the Stormac India entered into an settlement under Section 2(p) of the Industrial Disputes Act, 1947 (hereinafter referred to as, **"the Act"**) with its employees. On 9th October, 1987 the Stormac India offered voluntary retirement scheme to its employees. The said scheme was in operation till 15th December, 1987. The aforesaid 25 workmen accepted the offer of voluntary retirement made by the Stormac India and received the monetary benefits under the voluntary retirement scheme as well as the other legal dues such as gratuity, leave encashment, bonus, etc. The said 25 workmen also withdrew their provident fund and cooperative credit society fund. Since then, on 1st February, 1989 the Stovec Industries took over the Stormac India. In other words, the Stormac India was merged with the Stovec Industries pursuant to the order made by the High Court at Bombay. Since the said merger of the Stovec Industries and Stormac India, the Union raised a dispute that the concerned workmen had been compelled by the Stormac India to accept voluntary retirement and to resign from service. Pursuant to the dispute raised by the Union, the Conciliation Officer, after

hearing the Stovec Industries, by his order dated 14th December, 1989, held that no dispute existed between the Stovec Industries and the workmen. Accordingly the Conciliation Officer refused to make reference. Feeling aggrieved, the Union preferred the above Special Civil Application No.994/1990 and challenged the action of the Conciliation Officer in not referring the industrial dispute raised by the Union to the Industrial Tribunal. The learned Single Judge has, by the impugned order, held that no period of limitation is prescribed for referring the industrial dispute under Section 10 of the Act. The learned Single Judge was, therefore, pleased to direct the Conciliation Officer to refer the industrial dispute as envisaged by Section 10 of the Act. Therefore, the present Appeal.

Mr.Gandhi has assailed the judgment passed by the learned Single Judge. He has submitted that the workmen were the employees of the Stormac India. The Stormac India had offered a scheme for voluntary retirement. The said offer was willingly accepted by the workmen. The workmen had received the benefit

under the scheme for voluntary retirement and also other monetary benefits. The workmen having accepted the offer of voluntary retirement and received the money as aforesaid, the relationship of master and servant with Stormac India had come to an end. After severance of the relationship there could not be an industrial dispute between the Stormac India and its employees and for that matter between the Stovec Industries and the said workmen. In support thereof he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **A.K.Bindal and another v/s. Union of India and others** [AIR 2003 SC 2189]. He has also relied upon the judgment in the matter of **ANZ Grindlays Bank Ltd. (now known as Standard Chartered Grindlays Bank Ltd.) v/s. Union of India and others** [(2005)12 SCC 738] and upon an unreported judgment of this Court (Coram: R.S.Garg and Ravi R.Tripathi, JJ.) passed in the matter of **Makarpura Kamdar Karmachari Union v/s. State of Gujarat** [Letters Patent Appeal No.345 of 1999 decided on 8th August, 2005]. He has further submitted that in any view of the matter the learned Single Judge could not have issued direction to the Conciliation Officer to

make a reference. At the best the learned Single Judge could have directed the Conciliation Officer to reconsider his decision. In support thereof he has relied upon the judgment of the Hon'ble Supreme Court in the matter of **The Govind Sugar Mills Ltd. and another v/s. Hind Mazdoor Sabha and others** [(1976)1 SCC 60].

In the matter of ANZ Grindlays Bank Ltd. (supra), the Hon'ble Supreme Court has held that the settlement entered into by the appellant Bank and the members of the employees' union not before the Conciliation Officer or Labour Court or Industrial Tribunal was binding only upon the parties thereto. The Hon'ble Supreme Court held that the reference made by the Conciliation Officer in that case was futile. In the circumstances, the Hon'ble Court quashed the reference made by the Central Government to the Industrial Tribunal. In the matter of Makarpura Kamdar Karmachari Union (supra), similar were the facts. Some 350 workmen had accepted the voluntary retirement scheme and had received the money under the scheme. After receiving the money by

the workmen the Union raised the dispute in connection with the voluntary retirement scheme. This Court held that, **“...The State Government was absolutely justified in observing that no reference was required to be made because the Voluntary Retirement Scheme was accepted by the other side.”** In the matter of A.K.Bindal (supra) in connection with the voluntary retirement scheme, the Hon'ble Supreme Court has held that, **“...The main purpose of paying this amount (under the voluntary retirement scheme) is to bring about a complete cessation of the jural relationship between the employer and the employee. After the amount is paid an the employee ceases to be under the employment of the company or the undertaking, he leaves with all his rights and there is no question of his again agitating for any kind of his past rights, with his erstwhile employer including making any claim with regard to enhancement of pay scale for an earlier period. If the employee is still permitted to raise a grievance regarding enhancement of pay scale from a retrospective date, even after he has opted for Voluntary Retirement Scheme and has accepted the amount paid to him, the**

whole purpose of introducing the Scheme would be totally frustrated."

There is no gain-saying that the concerned workmen did accept the offer for voluntary retirement made by the Stormac India and also received the monetary benefits under the scheme and other monetary benefits. Thus, the relationship of the master and the servant between the Stormac India and the said workmen stood severed from the date the workmen accepted the offer for voluntary retirement and received the monetary benefit under the scheme. It was after the cessation of the said relationship that Stormac India was merged with Stovec Industries. At the time there was no jural relation between the Stormac India and the workmen. The workmen cannot have any claim against Stormac India nor can the workmen have a dispute with the Stovec Industries. In our opinion, the Conciliation Officer had rightly held that no industrial dispute existed between the Stovec Industries and the workmen. No reference was, therefore, required to be made under Section 10 of the Act. The learned Single Judge has manifestly

erred in holding that it was a contentious issue which required adjudication by a labour forum and that the Conciliation Officer had no right or power to decide such a contentious issue.

For the aforesaid reasons, we allow the Appeal. The impugned judgment and order dated 15th October, 1999 passed by the learned Single Judge is quashed and set-aside. The order made by the Conciliation Officer is restored.

(Ms. R.M.Doshit, J.) **(Harsha Devani, J.)**

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